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The Association of Credit
and Collection Professionals

July 17, 2018

The Honorable Bob Latta
Chairman
Subcommittee on Digital Commerce and
Consumer Protection
U.S. House of Representatives
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Digital Commerce and
Consumer Protection
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Latta and Ranking Member Schakowsky:

On behalf of ACA International, I am writing regarding the hearing, "Oversight of the Federal Trade Commission" in the Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection. ACA International is the leading trade association for credit and collection professionals representing approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

The credit and collection industry is a highly regulated industry complying with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. ACA members contact consumers exclusively for non-telemarketing reasons to facilitate the recovery of payment for services that have already been rendered, goods that have already been received, or loans that have already been provided. The use of modern technology is critical for the ability to contact consumers in a timely and efficient matter, and often the sooner and earlier in the collection process that a consumer is put on notice of a debt, the better off they are.

Congress passed the Fair Debt Collection Practice Act (FDCPA) in 1977 to govern third party debt collection practices including communications with consumers. However, at the time of its enactment, Congress provided the Federal Trade Commission (FTC), then the primary regulator for the FDCPA, with enforcement authority only but no rulemaking authority. In 2010 when enacting the Dodd Frank Wall Street Reform and Consumer Protection Act, (Dodd-Frank Act) Congress also provided the Bureau of Consumer Financial Protection (BCFP) with the authority to write rules for the FDCPA. The BCFP has indicated that it plans to propose rules for the FDCPA in March 2019 and shares jurisdiction with the FTC for enforcing it.

Despite that the credit and collection industry is already highly regulated, and despite that the industry is making informational calls not subject to the Do Not Call List, which is aimed at telemarketing communications, some of their calls have been blocked or impeded by

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technologies allegedly targeting "robocalls". Without question, the FTC's efforts in this area concerning "robocalls" have been laudable for the focus on bad actors making illegal calls. However, it must do a better job going forward differentiating between highly legal informational calls and illegal "robocallers", and stop using one-size-fits-all rhetoric punishing all callers seeking to communicate with consumers. Sweeping all communications into the category of "robocalls" is misleading to consumers and can often cause more harm than good when they do not receive information that they need.

Some Call Blocking Technologies are Impeding Legal Informational Calls

ACA has stood in support of FTC efforts to thwart the growing number of unlawful "robocalls" through narrow and targeted technological solutions. However, it is critical that as "robocall" processing tools are developed and implemented, these should not cause legitimate calls to be blocked, harming lawful business communications and depriving consumers of important, timely information. In 2017, ACA members became increasingly alarmed as they began to discover drops in right-party contacts coupled with discoveries that their legitimate business calls were being labeled as "suspected scam," "scam likely," or some other version that implied the call was not from a legitimate caller. Currently, industry members report that many carriers will provide a busy signal to the call originator when they block a legitimate call. Often the consumer does not even know a call attempt was made.

In recent months, ACA members have continued to report that legitimate calls that they are making are either blocked or mislabeled by third parties providers. Not only does this impede legitimate business communications but it also prompts misguided complaints when callers believe they are dealing with a bad actor. This mislabeling can also make a consumer reticent to communicate with the caller, even though it is in their best interest to learn about and resolve an outstanding account, if it appears they are speaking with a scammer. Given the critical importance of effective two-way communication to the debt collection process, this has become a serious issue that threatens the fundamental ability of debt collectors to communicate with consumers to share important account information and resolve outstanding debt.

ACA fears that the unintended negative effects of "robocall" processing tools will only get worse without intervention. Accordingly, we urge Congress to work with the FTC and other agencies such as the Federal Communications Commission (FCC) to ensure that legitimate businesses are not harmed by call blocking technologies, which can disadvantage consumers when they do not get informational business communications that they need.

The Stopping Bad Robocalls Act Could Harm Needed Legitimate Communications

We also have serious concerns about H.R. 6026 and S.3078 both entitled the Stopping Bad Robocalls Act. While the Stopping Bad Robocalls Act on its face sounds positive, implying that it addresses bad and illegal actors making abusive "robocalls", in reality it is not appropriately tailored to achieving that objective. Despite its purported efforts to curtail practices harming consumers, in practicality this legislation would harm businesses seeking to make informational calls to consumers about needed information. Specifically, the overly broad characterization of

what is considered a "robocall" and the proposed expanded definition of what is considered an autodialer are very problematic.

The legislation would stymie the free flow of information between thousands of legitimate businesses and consumers, by saddling them with additional compliance burdens and increased risks for the exorbitant costs and resource burdens associated with Telephone Consumer Protection Act (TCPA) litigation. This lack of clarity would also have a disproportionately harmful impact on small businesses and financial institutions, which would have a difficult time navigating how to comply with such broad definitions of what is considered an autodialer and the seemingly unlimited number of different ways that consent already provided could be revoked.

If the Stopping Bad Robocalls Act was appropriately tailored to focus on bad actors that are making abusive and illegal "robocalls", we would be in staunch support of such efforts. ACA members strongly agree that consumers deserve to be treated fairly and respectfully. However, the Stopping Bad Robocalls Act is not tailored to that goal and it instead does more harm than good by creating additional confusion, in an already confusing marketplace for determining how to comply with the TCPA. When Congress enacted the TCPA it was for the purpose of limiting abusive telemarketing calls, and this legislation would mark an even further departure from that laudable goal of stopping sales calls that consumers have not consented to receive. The FTC also has several other means to address abusive telemarketing calls such as the Do Not Call List, which does not require new legislation that sweeps in a plethora of other types of non-telemarketing calls.

Limiting consumers' ability to receive needed information is not a helpful step towards protecting them. As the BCFP recently noted in a letter to the FCC, "Consumers benefit from communications with consumer financial products providers in many contexts, including receiving offers of goods and services and notifications about their accounts. Recent years have seen rapid increases in the use of smart phones, text messages, email, social media, and other new or newer methods of communication. With the advent and deployment of these communication technologies, it is important to review how statutes and regulations apply to them."

Unfortunately, the Stopping Bad Robocalls Act is a step backwards. It is not helpful in clarifying a severely outdated statute enacted in 1991 that has not kept up with modern technology and consumers' preferences. Instead, it will make it harder for legitimate businesses to contact consumers, and for those consumers to learn about information they need to preserve their ability to access credit, health services, and a large variety of other exigent information.

Without an effective collection process, the economic viability of businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls. Also of great importance, the information that callers are seeking to provide consumers with often includes vital information that impacts their daily lives. Accordingly, Congress and the FTC

should draw clear distinctions between communications that are illegal and abusive and those that are highly legal and needed.

Thank you for your attention to these important matters.

Sincerely,

Mark Neeb
Chief Executive Officer